

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY BRIAN PORTEOUS,) Case No.: 1:21-cv-00529-SAB (PC)
Plaintiff,)
v.) ORDER DENYING PLAINTIFF'S MOTION
R. AVILA, et al.,) FOR APPOINTMENT OF COUNSEL,
Defendants.) WITHOUT PREJUDICE
) (ECF No. 25)
)
)

Plaintiff Larry Brian Porteous is proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

Currently before the Court is Plaintiff's motion for appointment of counsel, filed June 9, 2022. Plaintiff does not have a constitutional right to appointed counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), and the court cannot require any attorney to represent plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

Without a reasonable method of securing and compensating counsel, the court will seek volunteer counsel only in the most serious and exceptional cases. In determining whether "exceptional circumstances exist, the district court must evaluate both the likelihood of success on the

1 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
2 legal issues involved.” Id. (internal quotation marks and citations omitted).

3 In the present case, the Court does not find the required exceptional circumstances. In support
4 of his motion, Plaintiff alleges that counsel should be appointment because: (1) he is indigent; (2) his
5 imprisonment limits his ability to litigate the action; (3) a trial will likely involve conflicting
6 testimony; and (4) he has limited access to the law library. (ECF No. 25.) Even if it assumed that
7 Plaintiff is not well versed in the law and that he has made serious allegations which, if proved, would
8 entitle him to relief, his case is not exceptional. The Court is faced with similar cases almost daily.
9 Circumstances common to most prisoners, such as lack of legal education and limited law library
10 access, do not establish exceptional circumstances that would warrant a request for voluntary
11 assistance of counsel. While the Court recognizes that Plaintiff is at a disadvantage due to his pro se
12 status and his incarceration, the test is not whether Plaintiff would benefit from the appointment of
13 counsel. See Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986) (“Most actions require
14 development of further facts during litigation and a pro se litigant will seldom be in a position to
15 investigate easily the facts necessary to support the case.”) The test is whether exception
16 circumstances exist and here, they do not. Thus far, Plaintiff has been able to draft a complaint which
17 was ordered served and has propounded discovery on Defendants. This action is proceeding on
18 Plaintiff’s due process claim against Defendants Avila and Welch and retaliation claim against
19 Defendant Avila, and at this early stage of the proceedings the Court cannot make a finding that
20 Plaintiff is likely to succeed on the merits. Accordingly, Plaintiff’s motion for the appointment of
21 counsel is denied, without prejudice.

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23 IT IS SO ORDERED.

24 Dated: June 13, 2022



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26 UNITED STATES MAGISTRATE JUDGE
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